

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

CONSUMER FINANCIAL PROTECTION
BUREAU; COMMONWEALTH OF
MASSACHUSETTS; THE PEOPLE OF
THE STATE OF NEW YORK, by LETITIA
JAMES, Attorney General of the State of
New York; and COMMONWEALTH OF
VIRGINIA, *EX REL.* MARK R. HERRING,
ATTORNEY GENERAL,

Plaintiffs,

v.

NEXUS SERVICES, INC., LIBRE BY
NEXUS, INC., MICHEAL DONOVAN,
RICHARD MOORE, and EVAN AJIN,

Defendants.

Case No.: 5:21-cv-00016-EKD

OPPOSITION TO RENEWED MOTION TO WITHDRAW

Plaintiffs, the Consumer Financial Protection Bureau, the Commonwealth of Massachusetts, the State of New York, and the Commonwealth of Virginia (“Plaintiffs”), by counsel, state as follows in opposition to the Renewed Motion for Leave to Withdraw as Counsel of Record, ECF No. 47, filed by Mario B. Williams, of the law firm NDH LLC, and John M. Shoreman, of the law firm McFadden & Shoreman, seeking leave to withdraw immediately as counsel for Defendants Nexus Services, Inc., Libre by Nexus, Inc., Micheal Donovan, Richard Moore, and Evan Ajin (“Defendants”).

1. On June 21, 2021, counsel for Defendants, Mario B. Williams and John M. Shoreman, each filed motions for leave to withdraw (the “First Motions to Withdraw”). Williams’s Mot., ECF No. 39; Shoreman’s Mot., ECF No. 40.

2. Mr. Williams’s motion stated as the only basis for withdrawal that “[p]ursuant to Rule 1.16 of the Rules of Professional Conduct of the Virginia State Bar,” he “is unable to continue to represent the Defendants in this matter because of, amongst other reasons, irreconcilable differences.” Williams’s Mot. ¶ 1, ECF No. 39.

3. Mr. Shoreman’s motion stated as the only basis for withdrawal that “[p]ursuant to Rule 1.16 of the Rules of Professional Conduct of the Virginia State Bar,” he “is unable to continue to represent the Defendants in this matter.” Shoreman’s Mot. ¶ 1, ECF No. 40.

4. The First Motions to Withdraw stated that “Defendants . . . represent[ed] that substitute counsel will enter an appearance following the pending hearing on the Motion to Dismiss.” Williams’s Mot. ¶ 5, ECF No. 39; Shoreman’s Mot. ¶ 3, ECF No. 40.

5. On these grounds, the First Motions to Withdraw sought the Court’s permission “to immediately withdraw as counsel of record in this case.” Williams’s Mot. at 2, ECF No. 39; Shoreman’s Mot. at 2, ECF No. 40.

6. On July 2, 2021, Plaintiffs filed oppositions to the First Motions to Withdraw. Pls’ Resps. in Opp’n., ECF Nos. 45 and 46.

7. Mr. Shoreman and Mr. Williams did not file reply papers in support of their First Motions to Withdraw.

8. The First Motions to Withdraw are fully briefed and are awaiting the Court’s decision.

9. On July 14, 2021, Mr. Shoreman and Mr. Williams jointly filed the Renewed Motion for Leave to Withdraw as Counsel of Record (the “Renewed Motion”), ECF No. 47.

10. The Renewed Motion provides no additional basis for withdrawal. Rather, the Renewed Motion admits that, despite having been “assured that substitute counsel would enter an appearance following the hearing on the Motion to Dismiss, . . . no appearance by substitute counsel has been entered.” Renewed Mot. ¶¶ 2-3, ECF No. 47. Consequently, Mr. Shoreman and Mr. Williams ask that “Defendants be afforded thirty (30) days to obtain counsel to represent them in the case moving forward.” *Id.* ¶ 4.

11. Both the First Motions to Withdraw and the Renewed Motion should be denied.

12. Local Rule 6(i) provides that “[n]o attorney of record shall withdraw from any cause pending in this Court, except with the consent of the Court for good cause shown.” W.D. Va. Gen. R. 6(i); *see also United States v. Johnson*, 114 F.3d 435, 442 (4th Cir. 1997) (providing that leave to withdraw as counsel may be granted in the discretion of the court).

13. Defendants’ counsel have not shown good cause to withdraw.

14. Further, Plaintiffs will be prejudiced by the withdrawal of Defendants’ counsel before substitute counsel has appeared. Defendants’ responses to Plaintiffs’ initial discovery requests were due on July 9, 2021. Defendants failed to respond by the deadline and have not provided written responses and objections as of the date of this filing. Plaintiffs are currently attempting to engage Defendants’ counsel to resolve this issue. Permitting Defendants’ counsel to withdraw at this stage will frustrate Plaintiffs’ ability to secure discovery in a timely manner, cause cascading delays in the case, and may

result in avoidable motion practice. *See United States v. Miles*, No. 2:18-cr-56, 2019 U.S. Dist. LEXIS 146829, at *5 (E.D. Va. Aug. 28, 2019) (noting that “[t]he Fourth Circuit has recognized that motions to substitute counsel cannot be used to manipulate or delay proceedings” and that “a district court has an interest in keeping its docket moving”).

15. Defendants have obtained and are represented by counsel in other actions, including before this Court. *See, e.g., RLI Ins. Co. v. Nexus Services, Inc.*, No. 5:18-cv-66-MFU-JCH (W.D. Va.).

16. Defendants have had ample time to obtain substitute counsel.

17. To avoid delay and prejudice to Plaintiffs, Plaintiffs respectfully request that the First Motions to Withdraw, ECF Nos. 39-40, and the Renewed Motion, ECF No. 47, be denied or deferred until substitute counsel for Defendants has entered an appearance.

Dated: July 16, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 16, 2021, I filed the foregoing Opposition to the Renewed Motion to Withdraw with the Court using the CM/ECF filing system, which notifies all attorneys of record of the filing by e-mail.

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